IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No. 302/2005

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 20.12. 2006

Heard Shri D.L. Dharmadhikari, learned counsel for the appellant and Shri S.T. Garad, Advocate holding for Mr. Bhutada, the learned counsel for the respondent.

2. By this appeal, the appellant assails the Judgment and decree dated 24.1.2005 passed by the 4th Ad hoc Additional District Judge, Wardha dismissing the appeal filed against the Judgment and decree dated 18.10.2002 passed by the Joint Civil Judge, Junior Division, Arvi in Regular Civil Suit No. 93/92. The appellant is the original defendant and the tenant of respondent/plaintiff. The respondent after obtaining permission from the Rent Controller to evict the appellant on the ground of bona fide requirement of the suit premises filed the above suit on 10.12.1992. The suit was contested. The trial court upon appreciation of the evidence led by the parties held that the plaintiff had established the case and consequently granted the decree of eviction. The appeal preferred against the said

decree was also dismissed. Hence, the present second appeal.

3. Mr. Dharmadhikari, the learned counsel appearing for the appellant submitted that both the courts below have erred in passing the decree of eviction in the absence of the lease deed. He further submitted that the other legal heirs of the father of the appellant were not joined as defendants in the suit and, therefore, the suit was not maintainable. Lastly he submitted that in the event appeal is not admitted the appellant be granted reasonable time to vacate the suit premises. Mr. Garad, the learned counsel appearing for the respondent submitted that the findings given by the trial court and confirmed by the appellate court are borne out from the evidence on record and no interference is called for in this appeal.

Having perused the Judgments passed by both the courts below and having considered the submissions made by the learned counsel for the parties, I find no merit in the present appeal. Since the plaintiff had established relationship of landlord and tenant between the parties, the plaintiff having established bona fide requirement of the suit premises was entitled to the decree and, therefore, the trial court was justified in passing the decree against the defendant. In so far as the argument regarding non-joinder of other heirs of the original defendant is concerned I also find no merit

inasmuch as the same cannot be said to be fatal to the maintainability of the suit. I find no perversity in the findings recorded by both the courts below. No substantial question of law is involved in the present appeal. However, I am inclined to grant request made by Mr. Dharmadhikari on behalf of the appellant for time to vacate the suit premises. In the interest of justice, the appellant is granted time to vacate the suit premises till 31st May 2007 subject to the appellant filing an undertaking in this court within a period of four weeks that he shall not induct any third person in the suit premises and that he shall hand over the vacant and peaceful possession of the suit premises to the respondent on 1st June, 2007. The appellant shall also pay monthly compensation at the rate corresponding to the rent payable by the appellant to the respondent for the period up to 31.5.2006. The appeal stands dismissed subject to the observations made above with no order as to costs.

C.A. No.3562/2005:

In view of the dismissal of the appeal, this application has become infructuous. Hence, the application is dismissed as infructuous.

Judge

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